

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-137

IN THE MATTER OF
JEFFREY D. SERVIN
AN ATTORNEY AT LAW

Decision

Argued: October 14, 1999

Decided: February 22, 2000

George Amacker, III, appeared on behalf of the District IV Ethics Committee.

Respondent appeared pro se.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us based on a recommendation for discipline filed by the District IV Ethics Committee ("DEC"). Respondent was admitted to the New Jersey bar in 1977. Respondent's primary law practice is located in Pennsylvania, where he is also admitted.

The complaint alleges that respondent's New Jersey office at 411 Cooper Street, Camden, Camden County does not constitute a bona fide office for the purposes of RPC 5.5(a) and R. 1:21-1(a).

On June 20, 1990 respondent received a private reprimand for commingling personal and client funds in his New Jersey trust account and failing to comply with the New Jersey attorney trust and business account recordkeeping requirements, in violation of RPC 1.15 and R. 1:21-6.

The facts are as follows:

In or about April 1997, Office of Attorney Ethics (OAE) Investigator Mary Jo Bartzak visited respondent's New Jersey office after a New Jersey Superior Court judge had difficulty contacting respondent at his New Jersey office location. Shortly thereafter, Bartzak discovered that respondent was one of eleven New Jersey attorneys listed as having an office at 411 Cooper Street. After her first visit to the location, Bartzak believed that the building was far too small to house eleven attorneys. On July 1, 1997, the OAE filed grievances against all eleven attorneys, including respondent.¹

On July 7, 1997, the OAE sent a letter to respondent at the Cooper Street address regarding the allegation that he had failed to maintain a bona fide New Jersey office. Respondent's reply was due by July 18, 1997. That letter was returned unopened on July 29,

¹Apparently, all of the grievances against the other attorneys were later dismissed for undisclosed reasons. However, it appears that many of those attorneys had ceased their New Jersey operations prior to the filing of the grievances.

1997, marked "MOVED LEFT NO ADDRESS" and "Postmaster, Returned to Sender Addressee Unknown-Attorney Not at This Firm - Wolf, Block, Schorr). On July 25, 1997, Bartzak wrote to respondent at the home address listed on his attorney registration form and required his reply by August 4, 1997. Respondent replied by letter dated August 7, 1997.

Bartzak testified that, on August 5, 1997, she visited respondent's Camden office. Respondent's name was listed in the building directory. Bartzak was greeted by a receptionist. When Bartzak asked if respondent still had an office in the building, the receptionist replied "he comes by once in a while." When Bartzak asked again if respondent maintained a law office in the building, the receptionist replied "you'll have to ask him that."

Bartzak further testified that, on August 20, 1997, she called respondent at his Cooper Street office regarding the investigation. The call was greeted by respondent's answering machine. Bartzak also called respondent's Philadelphia office and spoke with his law partner, Mr. Herman, who took a message for respondent. Respondent returned Bartzak's call later that afternoon. In the meantime, Bartzak went to the office location at 411 Cooper Street. The building's receptionist was unable to tell Bartzak anything about respondent's affiliation with the building and telephoned Charles Izzo, Esq., who also maintained an office in the building. Izzo's association with the operation of the building is unclear. It is known that he was a "core" tenant who assumed some responsibility for collecting rent from the other tenants and arranged for receptionist services in the building. Izzo showed Bartzak a first floor office, which respondent was allegedly vacating, and a second floor office,

which respondent purportedly would be occupying. However, Izzo's keys did not fit the locks to either office and Bartzak was unable to gain access to either office for inspection.

Thereafter, the OAE sent several letters to respondent at the Cooper Street address, including one dated February 5, 1998. That letter was returned marked "Moved, Left No Address."

Respondent denied the alleged violation of the bona fide office rule. In his answer to the complaint, respondent stated as follows:

The above-referenced office is not merely a mail drop. Pursuant to a lease agreement with the landlord, Charles Izzo, Esq., I rent an individual office on the second floor designated as 2B which is just down the hall from Mr. Izzo's office wherein I pay rent in the amount of \$250 per month. I do not use an answering service on the premises. The office is furnished and has files. Client and discovery meetings have been held there.

Files are kept there, clients have been met there, mail is received there and calls coming into that office are answered. Also, in connection with said office, I can be reached by telephone and in person, except for normal, logistical issues which occur when an attorney has a multi-office practice. My other office in Pennsylvania is just less than fifteen minutes from the office location in Camden. I believe that no client has ever complained about my availability, nor has lodged any formal complaint against me.

Respondent's agreement with Izzo was memorialized in a letter dated August 4, 1997.

One of the paragraphs of that letter stated as follows:

I will be renting the individual office 1-A, on the first floor at 411 Cooper Street, Camden, New Jersey 08102. That [sic] the monthly rent will be \$250

and that the terms of the rental agreement will be on a month-to-month basis.²

When respondent was asked at the DEC hearing what he meant by “I will be renting” and “the monthly rent will be,” respondent admitted for the first time that, until August 4, 1997, he did not have his own personal office at 411 Cooper Street. Respondent added that he had maintained his New Jersey “office” at the location since approximately 1993 and had use of the conference room and other facilities in the building whenever he needed them.

Respondent also produced several documents in support of his position. An “Identity Program Service Agreement” dated July 11, 1996 between respondent and Secretarial Services of America, Inc. purported to show that respondent had engaged secretarial services for his office operation. However, the page of the agreement that described those services was conspicuously absent from respondent’s proofs. Respondent presented no evidence at all regarding the office setup for the period from 1993 (when he allegedly first opened the office) to July 1996.

In that regard, respondent stated that, from approximately 1993 to mid-1997, Vintage Realty operated the building and that he paid between \$60 and \$125 per month for use of the facilities. Respondent testified as follows:

When I was with Vintage Realty I had access to an individual office. I had a use of a conference room much like this which was on the — which was in the basement area that they had fixed up very nicely. I would get mail there, clients would be met and received there. If mail came in there that I was not

²It should be noted that respondent’s letter to Izzo was sent one day before Bartzak’s August 5 visit and three days before he replied to the OAE’s earlier letter. By this time respondent knew that he was being investigated.

there for a certain period of time it would be forwarded over to me at my office. Phone calls were — phone calls came into the office there, but were not taken by their employees but were forwarded to my office in Philadelphia.

According to respondent, in mid-1997 Vintage Realty declared bankruptcy, causing disruption with the office services on which he relied. Respondent produced several letters between him and Izzo detailing respondent's concerns about the disruption and Izzo's efforts to remedy the situation.

With regard to the OAE investigator's initial visit to the location, respondent claimed that Corestates Bank, the mortgagee and plaintiff in a foreclosure on the building, had placed its own receptionist in the building in or about July 1997. Respondent's ostensible intent was to explain why Bartzak was not properly greeted or advised of respondent's whereabouts during the inspection. With respect to the Bartzak's second visit later that month, respondent could not explain why Izzo did not have the proper keys to the offices. Respondent stated that he was, in fact, in the process of moving from his first floor office to a new, second-floor office at the time.

Finally, with regard to the several letters from the OAE that were returned as undeliverable, respondent claimed that the July 7, 1997 correspondence was probably mistakenly returned by Corestates Bank personnel. Respondent had no explanation for the return of the OAE's February 1998 correspondence addressed to him.

* * *

In a very brief hearing panel report, the DEC found respondent guilty of a violation of RPC 5.5(b) and recommended the imposition of an admonition. No reasons were stated for its determination.

* * *

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent's conduct was unethical is supported by clear and convincing evidence.

Despite respondent's claims to the contrary, his was not a bona fide office from at least 1993 through mid-1997. R. 1:21-1 states as follows, in relevant part:

A bona fide office is a place where the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours. A bona fide office is more than a maildrop, a summer home that is unattended during a substantial portion of the year, or an answering service unrelated to a place where business is conducted.

From 1993 until 1997, respondent apparently enjoyed varying degrees of access to the building facilities and services at 411 Cooper Street, which degrees were poorly documented by respondent. Respondent urged that he had an arrangement with Vintage Realty and/or Secretarial Services of America to provide office space and services during that time period. However, by respondent's own admission, he did not have a space that

could be described as his own office — clearly an essential element of a bona fide office — until August 1997, when he contracted to lease space from Izzo.

Likewise, respondent had no personnel at the Cooper Street office. No one present at the location acted on respondent's behalf at any time in question. Certainly the Corestates Bank receptionist, apparently in charge of directing visitors to the attorney offices in the building during the middle of 1997, was not a responsible person acting on respondent's behalf, within the meaning of R. 1:21-1. On the two occasions that the OAE attempted to personally contact respondent at the location, the receptionist did not know if respondent had an office in the building. Izzo, too, did not act on respondent's behalf and, in fact, could not even gain access to respondent's office.

Attempts to reach respondent by telephone, according to Bartzak, were met with an answering machine, that, respondent later admitted, forwarded calls to his Pennsylvania office. Indeed, respondent later conceded that, for a significant period of time, all New Jersey calls were forwarded to his Pennsylvania office for handling.

Mail, too, remained undelivered to respondent. Letters from the OAE regarding the investigation were returned as undeliverable on several occasions, including February 1998, well after respondent claimed that his office complied with the bona fide office rule.

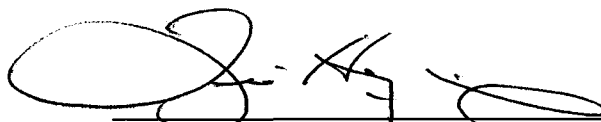
In sum, respondent had ample opportunity to prove his contention that his office complied with the rule, but the evidence simply does not add up in his favor. To the contrary, the conclusion is inescapable that respondent violated RPC 5.5 (a).

We also considered, as an aggravating factor, that this is respondent's second confrontation with the New Jersey disciplinary authorities concerning the operation of his New Jersey practice. Respondent received a private reprimand in 1990 for commingling funds generated by his primary practice in Pennsylvania and client funds in his New Jersey trust account in violation of RPC 1.15, along with recordkeeping violations. Respondent should have had a heightened awareness of the importance of maintaining his ancillary New Jersey practice in a manner that complied with the rules.

As to the issue of discipline. Cases involving failure to maintain a bona fide office ordinarily result in the imposition of a reprimand. In re Kasson, 141 N.J. 83 (1994) (reprimand imposed for failure to maintain a bona fide office after a trial judge was unable to reach an attorney at his office to discuss a pending matter. No attorney or responsible person was available at the attorney's office location or by telephone during normal business hours.) But see In the Matter of Basil D. Beck, III, DRB 95-160 (February 1996) (admonition imposed for failure to maintain a bona fide; in mitigation, it was considered that the attorney took swift measures to remedy the deficiency) and In re Guyer Young, 144 N.J. 165 (1996)(admonition imposed for failure to maintain a bona fide office while representing an estate; attorney's representation in New Jersey was confined to one matter.) Unlike Beck and Guyer Young, however, there are no mitigating factors to be considered in this case. Indeed, respondent's prior ethics history is an aggravating factor. Therefore, we unanimously determined to impose a reprimand. Two members did not participate.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 2/22/2000

A handwritten signature in black ink, appearing to read "Lee M. Hymerling", written over a horizontal line.

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

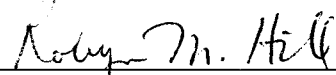
In the Matter of Jeffrey D. Servin
Docket No. DRB 99-137

Argued: October 14, 1999

Decided: February 22, 2000

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Cole			x				
Boylan							x
Brody			x				
Lolla			x				
Maudsley							x
Peterson			x				
Schwartz			x				
Wissinger			x				
Total:			7				2


Robyn M. Hill
Chief Counsel